

NO. PD-0243-20

IN THE
TEXAS COURT OF CRIMINAL APPEALS
AT AUSTIN

FILED
COURT OF CRIMINAL APPEALS
2/1/2021
DEANA WILLIAMSON, CLERK

SANDRA JEAN MELGAR,
Appellant

VS.

THE STATE OF TEXAS,
Appellee

ON DISCRETIONARY REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTEENTH
SUPREME JUDICIAL DISTRICT OF TEXAS
AT HOUSTON
CASE NUMBER 14-17-00932-CR

Appeal in Cause Number 1435566
In the 178th District Court
of Harris County, Texas

MOTION TO RECONSIDER REQUEST FOR ORAL ARGUMENT

TO THE HONORABLE JUDGES OF SAID COURT:

NOW COMES, SANDRA JEAN MELGAR, appellant in the above-styled and numbered cause, by and through her attorneys of record, George McCall Secrest, Jr., and Allison Secrest, and pursuant to T.R.A.P. 10.1, presents this Motion To

Reconsider Request for Oral Argument, and would show the Court the following:

I.

By judgment dated August 24, 2017, appellant was convicted of the offense of murder in Cause Number 1435566 in the 178th District Court of Harris County, Texas, styled *The State of Texas v. SANDRA JEAN MELGAR*. Her punishment was assessed at twenty-seven (27) years imprisonment in the Texas Department of Criminal Justice Institutional Division and a fine of \$10,000.00. Her conviction was thereafter affirmed by the Fourteenth Court of Appeals.

II.

On August 19, 2020, this Court granted Appellant's Petition for Discretionary Review. On November 4, 2020, the appellant timely filed her brief. On December 29, 2020, the State filed its response. The appellant thereafter requested leave of court to file a Reply Brief which was granted on January 22, 2021. When the Court granted Appellant's Petition for Discretionary Review, it did not permit oral argument although Appellant had requested the same in her Petition for Discretionary Review.

III.

The undersigned counsel respectfully request that oral argument be granted because it would substantially assist this Court in resolving the four interrelated legal-sufficiency grounds pending for review. The panel sanctioned a verdict of guilty based

on sheer speculation about the possible meaning of evidence and not on reasonable inferences supported by the evidence. Significant questions are presented regarding the legal contours of *Hooper v. State*, 214 S.W.3d 9, 15–16 (Tex. Crim. App. 2007), the seminal case from this Court mandating, that “juries are not permitted to come to conclusions based on mere speculation or factually unsupported inferences or presumptions”, and as such, “conclusions reached by speculation”, are “not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt.” *Id.* at 16. The State wholly fails to even mention *Hooper* in its brief.

The panel mischaracterized and failed to consider *all* the evidence—especially that adverse to its ultimate conclusions. For its part, the State suggests that “[a] proper sufficiency review here begins with disregarding evidence the jury could have disregarded based on credibility.” (State’s Brief at 14). No authority was cited in support of this extra-constitutional proposition; in fact, this Court has specifically held that an appellate court must “consider the *countervailing evidence* as well as the evidence that supports the verdict.” *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010) (Emphasis added).

While reviewing courts must accord due deference to the jury’s responsibility “to fairly resolve conflicts in the testimony”, “application of the beyond-a-reasonable-doubt standard to the evidence is *not* irretrievably committed to jury discretion.”

Jackson v. Virginia, 443 U.S. 307, 317, fn. 10 (1979). The rationality of the jury’s resolution of “conflicts in evidence” is always subject to review. *Id.* at 326. This is precisely why this Court has determined that the rationality requirement of *Jackson v. Virginia* is “as exacting... as any factual–sufficiency standard.” *Brooks, supra*, at 906. Throughout its brief, the State ignores the distinctly separate “rationality” component essential to a legal-sufficiency review on appeal.

Finally, in its legal-sufficiency review, the panel opinion sanctioned the making of factual determinations *against the defendant* on no more than the apparent disbelief of a witness, *despite the fact that the prosecution offered no substantive evidence contrary to the witness’s testimony*. “Disbelief of certain testimony, however, cannot stand in as proof of the opposite of that testimony.” *Tillman v. State*, 426 S.W.3d 836 (Tex. App.–Houston [1st. Dist.] 2014, pet. ref’d). As a result, the prosecution was not required to shoulder both its burdens of production and persuasion beyond a reasonable doubt. *Gold v. State*, 736 S.W.2d 685, 689 (Tex. Crim. App. 1987).

All four Grounds for Review granted by this Court raise significant legal questions of a constitutional dimension. Oral argument would provide the Court the opportunity to pose questions to counsel, seek clarification of legal and factual positions, and allow counsel a meaningful opportunity to respond.

WHEREFORE, premises considered, the Appellant requests that oral argument be permitted in this case.

Respectfully submitted,

/s/ George M. Secrest, Jr.

GEORGE McCALL SECREST, JR.

State Bar No. 17973900

BENNETT & SECREST, PLLC

1545 Heights Blvd. Suite 800

Houston, Texas 77008

(713) 757-0679

(713) 650-1602 (FAX)

Allison Secrest

State Bar No. 24054622

1545 Heights Blvd. Suite 800

Houston, Texas 77008

(713) 222-1212

(713) 650-1602 (FAX)

Attorneys for the Defendant,

SANDRA JEAN MELGAR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Reconsideration of Request for Oral Argument has been furnished to Ms. Stacey M. Soule, State Prosecuting Attorney, information@spa.texas.gov and Mr. Clinton Morgan, morgan_clinton@dao.hctx.net, on this 28th day of January, 2021.

/S/ George McCall Secrest, Jr.

GEORGE McCALL SECREST, JR.